

**Amendment Under 37 CFR §1.116-Expedited Examining Procedure****Page 10 of 13**

Serial No.: 09/888,732

Confirmation No.: 2092

Filed: 25 June 2001

**For: RESPIRATOR VALVE****Remarks**

The Final Office Action mailed October 1, 2003 has been received and reviewed.

Claims 1, 3, 7-11, 13-21, and 34-42 having been indicated as allowable. Claims 47, 48, 54, and 55 have been canceled. Claims 43, 46, 49, 50, and 56 have been amended. As a result, upon entry of the proposed amendments, claims 1, 3, 7-11, 13-21, 34-46, 49-53, and 56 remain pending.

Reconsideration and withdrawal of the rejections in view of the above amendments and the following comments are respectfully requested.

**Allowable Subject Matter**

Applicants note that claims 1, 3, 7-11, 13-21, and 34-42 are indicated as allowable.

**Obviousness-Type Double Patenting Rejection**

Claims 43-45, 47-52, and 54-56 were rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-18 of U.S. Application No. 09/888,943 (Mittelstadt) in view of Dragerwerk (German patent # 1 213 249).

Applicants respectfully note that claims 1-18 of U.S. Application No. 09/888,943 are currently under appeal (Appeal Brief filed October 24, 2003). Upon the indication that claims 43-45, 47-52, and 54-56 are otherwise allowable, Applicants note that this provisional double patenting rejection should be withdrawn.

**Claims 55 & 56**

Applicants note that claims 55 and 56 were rejected only on the basis of the double patenting rejection over U.S. Application No. 09/888,943 in view of Dragerwerk (German Patent No. 1 213 249). Claims 55 & 56 were not subject to any rejections based on §§ 102 & 103.

As a result, the status of claims 55 and 56 is more properly indicated as allowable if rewritten to include the limitations of their base and any intervening claims.

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The proposed amendments to claim 50 accomplish that task, i.e., the limitations of claims 54 and 55 have been introduced into independent claim 50 and claim 56 has been amended to depend directly from claim 50.

In view of the above, Applicants respectfully submit that claims 50-53 and 56 are allowable upon entry of the proposed amendments. Entry of the amendments and an indication to that effect are respectfully requested.

**The 35 U.S.C. §102 Rejection**

Claims 43-45, 47-52, and 54 under U.S.C. §102(b) as being anticipated by Dragerwerk (German Patent No. 1 213 249). Applicants note that this rejection has been rendered moot with respect to claims 50-52 and 54 upon entry of the amendments proposed above.

Applicants have proposed amendments to claim 43 inserting the limitations of claims 47 and 48 and submit that these claims are allowable over Dragerwerk.

The proposed amendments recite that "the valve seat is generally planar and the valve flap has a curvature that causes a bias of the valve flap against the valve seat, wherein at least a portion of the curvature of the valve flap is at least partially flattened when the valve flap contacts the valve seat."

It is asserted in the Office Action that Dragerwerk discloses a valve flap that is curved and flattened in Figures 6 and 7. Applicants respectfully disagree. Rather, the valve flap of Dragerwerk is flat when open and closed as seen in Figures 6 & 7. The flap portion of the valve is that portion that is raised beginning at bending axis C-C in Figure 6.

If it is the Examiner's position that the valve flap include all portions of valve closing body 1, i.e., those portions on both sides of bending axis C-C, then the valve flap cannot be "cantilevered" as recited in claim 43 because it is supported within the boundaries of the valve closing body 1 (see, e.g., Figure 1).

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In view of the above, Applicants respectfully submit that proposed amended claim 43 and its dependent claims 44 and 45 are patentable over Dragerwerk. Reconsideration and withdrawal of the rejection of claims 43-45 as presented in this response are respectfully requested.

**The 35 U.S.C. §103 Rejection**

The Examiner rejected claims 46 and 53 under 35 U.S.C. § 103(a) as being unpatentable over Dragerwerk (German Patent No. 1 213 249).

Applicants submit that the rejection with respect to claim 43 is rendered moot in view of the proposed amendments to claims 43 and 50 as discussed above. Reconsideration and withdrawal of the rejection are, therefore, respectfully requested.

It should be noted that claim 46 has been amended to depend from claim 43 in this response (correcting the typographical error that had claim 46 depending from itself).

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**Summary**

It is respectfully submitted that pending claims 1, 3, 7-11, 13-21, 34-46, 49-53, and 56 are in condition for allowance and notification to that effect is respectfully requested.

The Examiner is invited to contact Applicants' Representatives, at the below-listed telephone number, if it is believed that prosecution of this application may be assisted thereby.

Respectfully submitted for  
MITTLESTADT et al.

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31 DECEMBER 2003

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**CERTIFICATE UNDER 37 CFR §1.8:**

The undersigned hereby certifies that this paper is being transmitted by facsimile in accordance with 37 CFR §1.6(d) to the Patent and Trademark Office, addressed to Assistant Commissioner for Patents, Mail Stop Box AF, P.O. Box 1450, Alexandria, VA 22313-1450, on this 31<sup>st</sup> day of December, 2003, at 12:25 PM (Central Time).

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